

REMARKS

In the Office Action mailed June 23, 2009, the Examiner rejected claims 24, 26, 27, 29 and 31-35. By way of the foregoing amendments and the markings to show changes claims 24, 26, 27, 29 and 31-35 have been amended, claims 47 – 55 have been added, claims 28 and 36 - 46 have been cancelled, and claims 25 and 30 remain withdrawn. The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Applicants are including herewith a supplemental information disclosure statement. The supplemental information disclosure statement includes machine translations of WO 00/59689 and FR 2 677 573 as a courtesy to the Examiner. WO 00/59689 is a translation of the Japanese sibling application JP2000-288983. Copies of foreign patent documents and non-patent literature together with a listing on form PTO/SB/08a are submitted herewith. Applicants include an English translation from the European Patent Office and Japanese Patent Office websites and are subject to the caveat expressed on the translations. Applicants respectfully solicit the Examiner's consideration of the cited references and entry thereof into the record of this application. A fee of \$180.00 is believed to be due, however, if any additional fee is due with the filing of this paper please charge the amount to deposit account 50-1097.

NEW CLAIMS

Applicants have added new claims 47-55. No new matter has been added. Support for the new claims under 35 U.S.C. § 112 can be found in U.S. Patent Application Publication No. 2007/0214969 at paragraphs [0064] and [0065] and Figures 3a - 3c.

CLAIM REJECTIONS – 35 U.S.C. § 102

The Office Action rejected claims 24, 26, 27, and 31 – 35 under 35 U.S.C. § 102 as being anticipated by Toda (WO 00/59689). It is well settled that a claim is invalid as anticipated under 35 U.S.C. § 102 only if “a single prior art reference discloses either expressly or inherently, each limitation of the claim.” *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 64 U.S.P.Q.2d 1202 (Fed. Cir. 2002). The Office Action has failed to point out where Toda teaches all of the elements of claims 24 and 26. For example the Office Action does not show where Toda teaches “conveyed towards the blade,” of claim 24, or “the food food product block is conveyed towards the blade by at least one conveying means,” of claim 26. Further, the Office Action has failed to show where Toda teaches “characterized in that contact between the means and the food product block **occurs only during slicing of the respective food product block**,” of claim 24, or “at any desired time **during slicing** of the food product block, **the rear end of the food product block is brought into contact in each case with a means**,” of claim 26. The Office Action failed to make any fact findings showing where Toda teaches either of these features.

The Office Action suggests that it is inherent that Toda teaches embodiment of claim 32, which states that “the connection between the means and the food product block is broken once slicing of the at least one food product block is complete.” However, “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” MPEP 2112IV (quoting Ex parte Levy, 17 USPQ2d 1461, 1467 (Bd. Pat. App. & Inter. 1990) (emphasis in original)). Here the Office Action has supplied no facts or technical reasoning to support the inherency determination. The Office Action has only concluded that it is inherent without showing that the “characteristic necessarily flows from the teachings of the applied prior art.” Therefore, a proper rejection based on

inherency has not been made and Applicants respectfully request that the rejection be withdrawn.

The Office Action next suggests that Toda teaches, "the means is driven, at least at times, **solely by the conveying means** of the food product block, and/or **by the food product block**." However, the Office Action has never shown where Toda teaches a conveying means. The Office Action has also not shown where Toda teaches that the food product block can be used to drive the means.

CLAIM REJECTIONS – 35 U.S.C. § 103

The Office Action rejected claim 29 under 35 U.S.C. § 103 as being unpatentable over Toda (WO 00/59689) in view of Holz (FR 2 677 573). The Office Action has failed to show where Toda teaches every element of claim 24 to which claim 29 depends. The Office Action also has not shown where Holz teaches these elements; thus, claim 29 cannot be obvious in view of the references of record. "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1070, 5 USPQ2d 1596 (Fed. Cir. 1988).

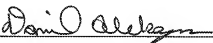
CONCLUSIONS

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

Respectfully submitted,

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